



**Texas Association of School Boards**

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • [legal.tasb.org](http://legal.tasb.org) • [legal@tasb.org](mailto:legal@tasb.org)

*Serving Texas Schools Since 1949*

## **Mid-Year Pay Increases of School District Employees**

*Published online in [TASB School Law eSource](#)*

School districts frequently inquire about the possibility of increasing compensation for a school district employee after the start of the school year. This question may be related to an increase of annual salary, a one-time bonus, or additional pay for additional duties. The legality of a mid-year pay increase is a fact-specific inquiry and requires analysis of the following statutory framework.

### **Constitutional Restrictions on Increase of Pay During the School Year**

Special rules apply to the compensation of school district employees because they are paid with public funds. Article III, section 53, of the Texas Constitution prohibits the grant of “extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part.” This restriction can be broken into two parts: (1) no extra compensation after services have been rendered (no retroactive increases); and (2) no extra compensation, under a contract, after the contract rate has been settled (no prospective increases). While the language of section 53 applies to “municipalities” and “counties,” the Texas Commission on Appeals concluded that these terms include public school districts. *Harlingen Indep. Sch. Dist. v. C.H. Page & Bro.*, 48 S.W.2d 983 (Tex. Comm’n App. 1932). In addition, article III, section 44 of the Texas Constitution prohibits the legislature from granting extra compensation to a public employee after a contract has been entered into under pre-existing law.

The purpose of these constitutional restrictions is to prevent political subdivisions from giving away public money for services previously rendered, for which no valid legal authorization exists or for which the public would receive no return. Tex. Att’y Gen. Op. Nos. GA-368 (2005), GA-204 (2004). In other words, once a person has agreed to provide services to a district at a certain price, the district must have a legal reason for paying more than the person bargained for.

### **Pay Increases After the School Year Begins**

Section 53 of the Texas Constitution prohibits a district from increasing an employee’s compensation after services have been rendered. Tex. Att’y Gen. Op. Nos. GA-368 (2005), GA-204 (2004), JC-376 (2001). This restriction applies to both at-will and contract employees. If an at-will employee has performed work at a set hourly rate or salary, the district may not pay the employee more than that hourly rate or salary for work that has already been performed. Similarly, a district may not increase a contract employee’s salary for work that has already been performed under the contract. Compensation includes salary, benefits, and incentive pay. Tex. Att’y Gen. Op. No. JC-376 (2001).

### **Bonuses Not Provided for in Compensation Plan**

The Texas Constitution similarly restricts districts from paying an employee a bonus after work has already been performed under a contract because bonuses are also considered compensation for services rendered. Tex. Att’y Gen. Op. No. JM-1253 (1990). However, if a law authorizing a bonus or incentive payment existed before the execution of the employment contract that increase in compensation such as bonuses or incentive payments would not violate sections 44 or 53. Tex. Att’y Gen Op. No. GA-204 (2004). Similarly, a district’s compensation plan may provide for a one-time annual payment for district employees.

### **The “Missing Term” in Educator Contracts**

These constitutional restrictions do not prohibit the practice of setting teacher pay after the first duty day of the school year. Section 6.1 of the TASB model contracts provide that employees will be paid according to the compensation plan adopted by the board. In many districts, the board adopts the compensation plan as part of the budget process, after work has begun for the school year. The attorney general has recognized that teachers have already agreed, by virtue of their contracts, to work each year under the salary annually approved by the district. Tex. Att’y Gen. Op. No. MW-68 (1979).

Although salary is certainly an essential term in an employment contract, educator contracts are valid and effective when they are signed, even before a final determination has been made on the “missing term” of salary. The state constitutional prohibition against after-the-fact salary increases for public employees is not violated by setting an employee’s salary after he performed his contract if the contract did not specify a salary term in advance. *Dallas County v. Lively*, 167 S.W. 219 (Tex. 1914). A valid contract can exist even when the payment term is left open because the law assumes the parties will set the term later in good faith. As a practical matter, districts set employees’ salaries when they adopt their budgets then apply any increases retroactively to the beginning of the duty year. As a rule, retroactive adjustment of salaries is permissible only at the beginning of the school year, when salaries are first set.

### **Bonuses Provided for In Advance**

Section 53 does not prohibit terms of employment that tie compensation to performance *if those terms were in place before services were rendered*. Tex. Att’y Gen. Op. No. JM-1253 (1990). For example, a district policy could authorize pay raises in the event of a high evaluation and provide that the increases start from the employees’ evaluation dates. The raises would not be *extra compensation* because they would be a term of employee compensation in place before the employee rendered services. Tex. Att’y Gen. Op. No. GA-368 (2005). Also, as described above, a district’s compensation plan may provide for a one-time annual payment for district employees as long as such a payment is authorized in the compensation plan through the budget adoption process.

## **Pay Increases Provided For In Advance**

Section 53 prohibits a district from increasing a contract employee's compensation after the contract rate has been settled. Tex. Att'y Gen. Op. No. GA-204 (2004). Section 53 prohibits the granting of *extra compensation* to an employee. Compensation is *extra* if it is "in addition to that allowed by law or contract." Tex. Att'y Gen. Op. No. GA-368 (2005).

As a general rule, a school district may not increase the compensation of an employee who holds a contract, such as a teacher or administrator, during the school year. A district may, however, increase pay if the employee's contract provides for the possibility of additional payments. If a district participates in the Educator Excellence Award/District Awards for Teacher Excellence (DATE) program, the district must provide in employment contracts that qualifying employees may receive an incentive payment. Tex. Att'y Gen. Op. No. GA-204 (2004). Section 6.4 of the TASB model contracts provide for this possibility:

- 6.4 Incentive and Performance Pay. If you qualify, you may receive incentive pay or pay for performance under the District's compensation plan, federal law, or state law. An incentive payment is not an entitlement as part of your salary.

Regardless of whether the district intends to rely on a federal, state, or local incentive pay plan, the plan must have been in place at the time the contract was entered into. Tex. Att'y Gen. Op. No. GA-368 (2005).

Existing law may also provide a basis for incentive pay. Laws existing at the time and place a contract is signed are incorporated into the contract. Tex. Att'y Gen. Op. No. GA-204 (2004). Thus, a district may pay a contract employee an incentive under the Advanced Placement Incentive Payment (APIP) program, if the employee entered into the contract on or after the effective date of that program (June 20, 2003). Tex. Att'y Gen. Op. No. GA-204 (2004).

## **Pay Increases in Exchange for Extra Work**

A district may also increase contract pay in return for extra work, often referred to as *consideration*. Tex. Att'y Gen. Op. Nos. GA-204 (2004), MW-68 (1979). *Consideration* is a legal term of art that refers to a bargained for exchange of promises. *Fed. Sign v. Texas S. Univ.*, 951 S.W.2d 401 (Tex. 1997). Consideration consists of some right, interest, profit, or benefit accruing to one party, or some forbearance, loss, or responsibility given, suffered, or undertaken by the other. *McRae Exploration & Prod., Inc. v. Reserve Petroleum Co.*, 962 S.W.2d 676 (Tex. App.—Waco 1998, no pet.). Examples of consideration include performing additional work (not already required under the employee's contract), waiving leave rights, or agreeing to a longer contract term.

Courts ordinarily will not consider the adequacy of consideration and consideration need not be of equal value to what was received. *Parker v. Dodge*, 98 S.W.3d 297 (Tex. App.—Houston [1st Dist.] 2003, no pet.). In other words, a district need not demonstrate, for purposes of contract law, that the consideration provided by a teacher, such as an additional day of work, is equal in value to the increase in salary.

### **Public Hearing for Payment in Excess of Amount Owed Under Contract**

State law prohibits a school district from paying an employee more than an amount owed under a contract with the employee unless the district holds a public hearing with specific elements provided by law. Tex. Loc. Gov't Code § 180.007. This requirement adds an additional barrier to implementing paying additional payments to contract employees during a contract year.

Based on the legislative history, the purpose of this law was to make the public aware of the use of public funds for contract buyouts that exceed the face value of the contract. There is no indication that the legislature added this law to make it easier to award a bonus or otherwise increase the compensation of a district employee after work has started for a contract year.

TASB Legal Services recommends that districts conduct a public hearing required by Texas Local Government Code section 180.007 if the district is uncertain as to whether a hearing is required. At the public hearing, the board must state: 1) the reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose served by the excess payment; and 2) the exact amount of the excess payment, the source of the payment, the terms for distribution of the payment that effect and maintain the public purpose of the excess payment. Tex. Loc. Gov't Code § 180.007(c). For more information about hearings for mid-year pay increases including hearing language see [Public Hearing for Payment in Excess of Amount Owed Under Contract](#), available on TASB School Law eSource.

If you have further questions, please contact TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/mid\\_year\\_pay\\_increases.pdf](http://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/mid_year_pay_increases.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](http://schoollawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

*Updated December 2017*